

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EVERYTOWN FOR GUN SAFETY
ACTION FUND, INC.,

Plaintiff,

v.

DEFCAD, INC.; ODYSEE USER
XYEEZYSZN; DEFCAD USER
XYEEZYSZN; ODYSEE USER
THEGATALOG-PRINTABLEMAGAZINES;
THE GATALOG; DEFCAD USER
FREEMAN1337; TWITTER USER
XYEEZYSZN; PHILLIP ROYSTER.

Defendants.

Civil Action No. 1:21-cv-8704

**DECLARATION OF ERIN
GALLOWAY IN SUPPORT
OF PLAINTIFF’S
APPLICATION FOR ORDER
TO SHOW CAUSE FOR
PRELIMINARY
INJUNCTION, EXPEDITED
DISCOVERY, AND
ALTERNATIVE SERVICE**

I, Erin Galloway, declare as follows¹:

1. I am over eighteen (18) years old and I am competent to testify to the facts in this Declaration based on my personal knowledge.

2. I am a paralegal at Venable LLP, counsel for Plaintiff Everytown for Gun Safety Action Fund, Inc. (“Everytown”) and I am a resident of North Carolina.

3. I submit this declaration in support of Everytown’s Application and to describe Defendants’ activities involving the distribution of 3-D printing files for gun parts and accessories bearing identical versions of the Everytown Marks.

¹ All undefined terms herein are defined as in Plaintiff’s Complaint.

4. Defendants are actively engaged in distributing downloadable files for the manufacture of actual 3-D printed gun parts and accessories, where the files and/or the resulting gun parts bear identical versions of the Everytown Marks (“Infringing Products”).

5. Defendants have recently escalated their efforts to distribute photographs and videos of firearms with identical versions of the Everytown Marks. An example of one such recent video posted in connection with Defendant Twitter User XYeezySZN’s account on October 4, 2021 is screen captured below.



6. The Defendants advertise and promote their Infringing Products through their websites, social media pages, and third-party websites.

Defendants Phillip Royster, Odysee User XYeezySZN, Defcad User xYeezySZN, and Twitter User xYeezySZN

7. Defendants Odysee User XYeezySZN, Defcad User XYeezySZN, and Twitter User xYeezySZN appear to be owned and/or operated by Defendant Phillip Royster as the username for the accounts are almost identical, the accounts have distributed and/or posted about the Infringing Products, and the accounts reference each other in various posts.

8. Defendant Odysee User XYeezySZN uploaded the downloadable file containing 3-D printing instructions for “Everytown—Firebolt Magwell (R) 5.56 Bolt Catch” to Odysee on August 20, 2021.

9. The listing uses Everytown’s identical EVERYTOWN® trademark in the product title - “Everytown—Firebolt Magwell (R) 5.56 Bolt Catch” - and identifies that “[t]his package contains two STL files...[b]oth contain the Everytown logo”, screenshots of the listing are provided in Complaint **Exhibit 5**.

10. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts and accessories emblazoned with the Everytown Marks.

11. Defendant Odysee User XYeezySZN encourages consumers to “POST YOUR MAKES! PLEASE TAG @xYeezySZN on twitter!” Images of completed guns bearing identical versions of the Everytown Marks have been, and currently are being posted on Twitter, including by Defendant Twitter User xYeezySZN.


12. The firearm products when 3-D printed, include Everytown’s EVERYTOWN®, and Flag Design Trademarks on the actual 3-D printed product, as depicted in Complaint **Exhibit 5** and below.

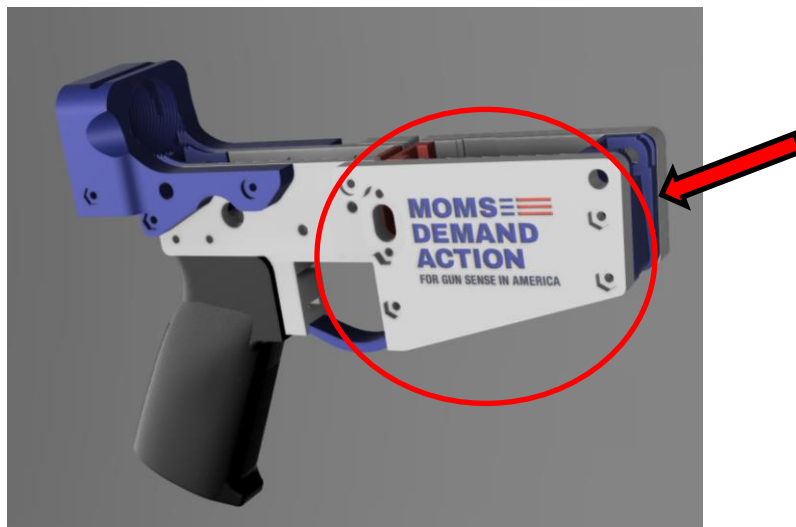


13. Defendant Odysee User XYeezySZN also uploaded a downloadable file containing 3-D printing instructions for “Moms Demand—Firebolt Magwell (R) 5.56 Bolt Catch” to Odysee on August 20, 2021.

14. The listing uses Everytown’s MOMS DEMAND ACTION® trademark in the product title - “Moms Demand—Firebolt Magwell (R) 5.56 Bolt Catch” - and identifies that “[t]his package contains two STL files...[b]oth contain the Moms Demand Action logo” screenshots of the listing are provided in Complaint **Exhibit 5**.

15. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts and accessories emblazoned with the Everytown Marks.

16. The product when 3-D printed includes Everytown’s identical MOMS DEMAND ACTION®, , and MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA® trademarks on the actual 3-D printed product, as depicted in Complaint **Exhibit 5** and below.




17. Defendant Defcad User XYeezySZN uploaded the downloadable file containing 3-D printing instructions for “Moms Demand Action—Firebolt 5.56 Bolt Catch Magwell” to Defcad.com on August 25, 2021.

18. The listing uses Everytown’s identical MOMS DEMAND ACTION® trademark in the product title - “Moms Demand Action—Firebolt 5.56 Bolt Catch Magwell” – and identifies that “[t]his package contains two STL files—an inlay and an emboss of the Mom’s Demand logo and motto...” screenshots of the listing are provided in Complaint **Exhibit 5**.

19. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts and accessories bearing the identical Everytown Marks.

20. The product when 3-D printed includes Everytown’s identical MOMS DEMAND



ACTION®, , and MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA® trademarks on the actual 3-D printed product, as depicted in Complaint **Exhibit 5** and below.


21. Defendant Defcad User XYeezySZN’s post also includes the Everytown Marks in its searchable tags, making it easier for other users to find.

22. As of the filing of Everytown’s Complaint, Defendant Defcad User XYeezySZN’s “Moms Demand Action—Firebolt 5.56 Bolt Catch Magwell” file has already been viewed over 3,000 times and downloaded almost 100 times.

23. Defendant Defcad User XYeezySZN also uploaded the downloadable file containing 3-D printing instructions for “Everytown—Firebolt 5.56 Bolt Catch (R) Magwell Panel” to Defcad.com on August 25, 2021.

24. The listing uses Everytown’s identical EVERYTOWN® trademark in the product title - “Everytown—Firebolt 5.56 Bolt Catch (R) Magwell Panel” - and identifies that “[t]his package containing [sic] two STL’s [sic]—both STL files...include the Everytown logo.” Screenshots of the listing are provided in Complaint **Exhibit 5**.

25. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts bearing the identical Everytown Marks.


26. The product when 3-D printed includes Everytown’s EVERYTOWN®, , and EVERYTOWN FOR GUN SAFETY ACTION FUND® trademarks on the actual 3-D printed product, as depicted in Complaint **Exhibit 5** and below.



27. Defendant Defcad User XYeezySZN’s post also includes the Everytown Marks in its searchable tags.

28. As of the filing of Everytown’s Complaint, Defendant Defcad User XYeezySZN’s “Everytown—Firebolt 5.56 Bolt Catch (R) Magwell Panel” file has already been viewed over 1,400 times and downloaded almost 100 times.

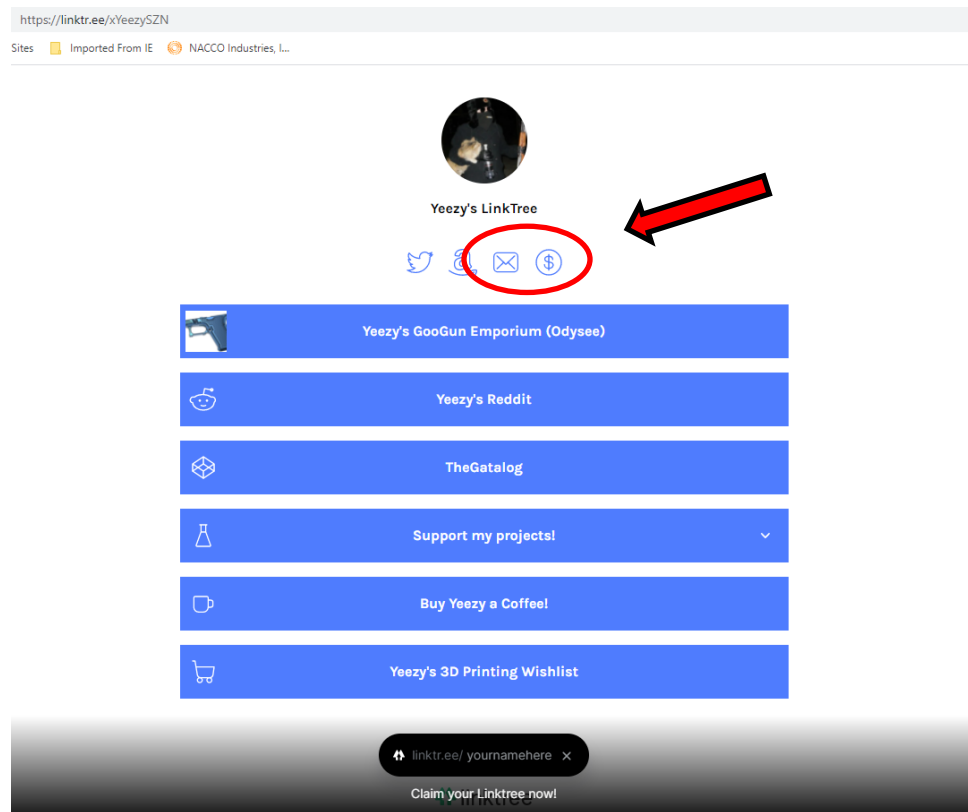
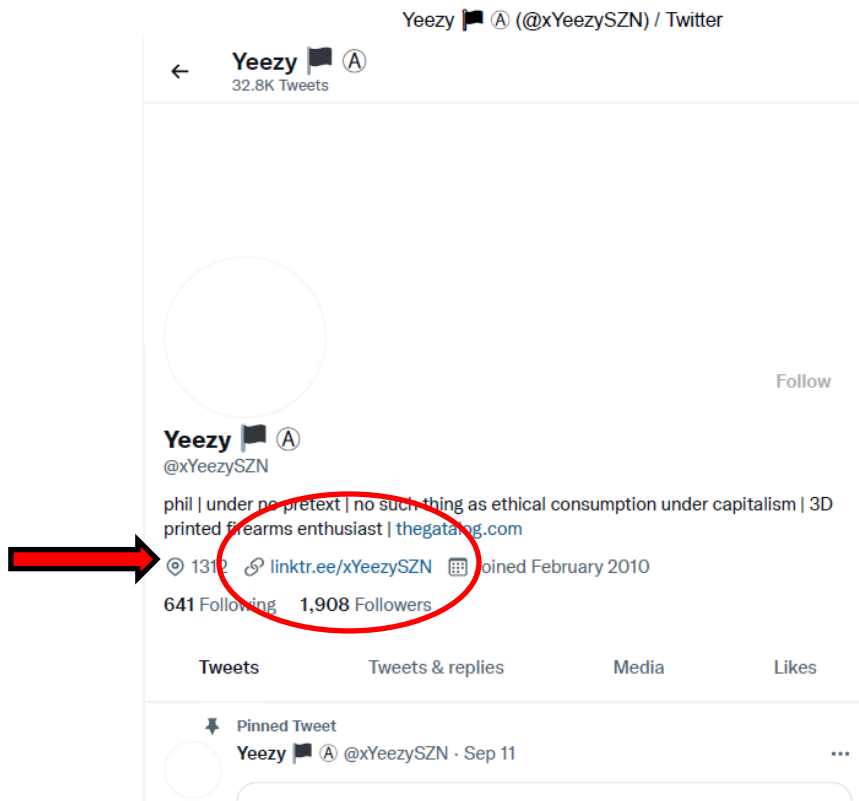
29. On October 4, 2021 Defendant Twitter User xYeezySZN tweeted directly at Everytown’s Twitter account stating, “Hey @Everytown, how do you like this AR-15 ‘ghost gun’ with a 30 round mag clipazine [sic]? I designed it special for you.”


30. The gun depicted in the tweet includes Everytown’s identical EVERYTOWN®, , and EVERYTOWN FOR GUN SAFETY ACTION FUND® trademarks on the actual 3-D printed product, as depicted in Complaint **Exhibit 5** and below.

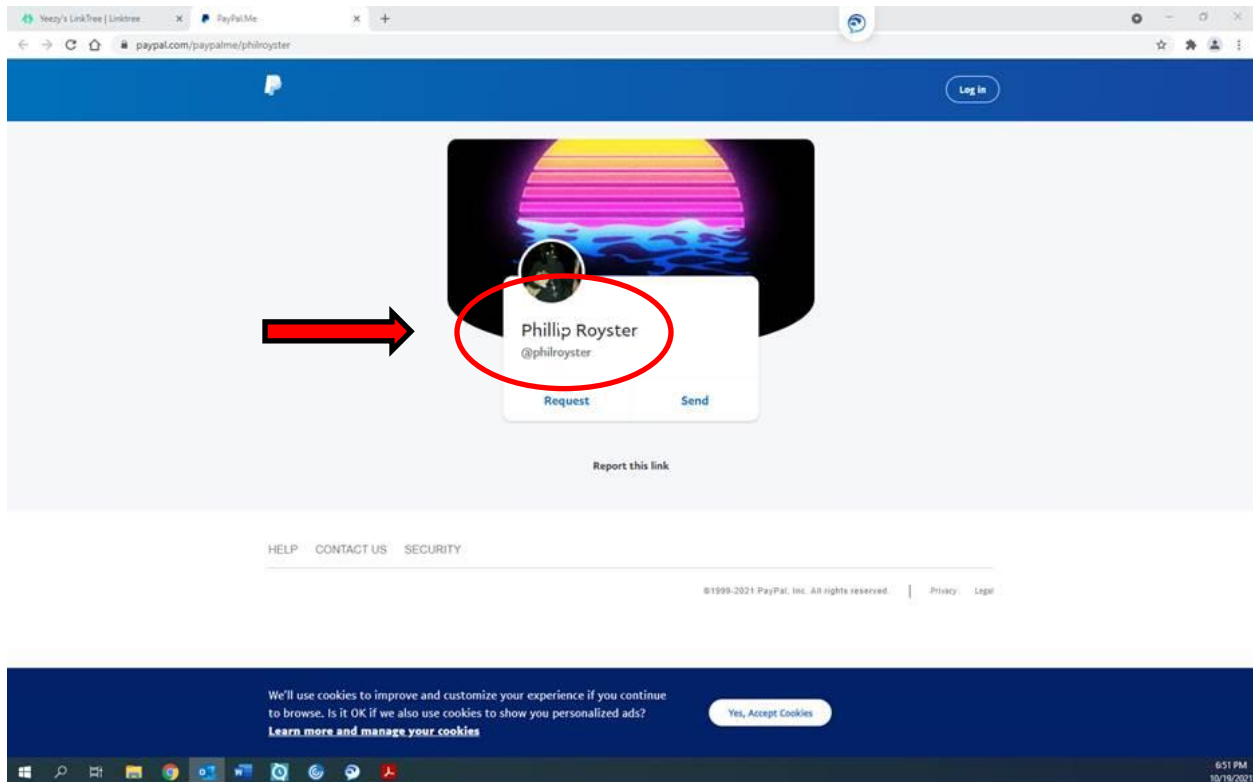



31. Twitter User xYeezySZN then replied to its own tweet with a video where the gun bearing Everytown’s identical EVERYTOWN® Marks is shown firing nine (9) rounds over the course of five (5) seconds.

32. Everytown has reason to believe Defendant Phillip Royster owns and/or operates Odysee User xYeezySZN, Defcad User xYeezySZN, and Twitter User xYeezySZN as a linktree that was previously posted to Twitter User xYeezySZN’s account identified a PayPal account in the name of Phillip Royster. Photographs collected by Venable depicting the linktree link (<https://linktr.ee/xYeezySZN>) on Twitter User xYeezySZN’s account page, and the linktree landing page are depicted below:



33. Upon clicking the dollar sign icon (depicted as ) on the linktree landing page, a viewer is brought to a PayPal account landing page for Phillip Royster with options to request or send payment to the account. An image of the PayPal landing page obtained by Venable is below:



34. The email address YeezyPrints@protonmail.com in connection with Defendants Phillip Royster, Odysee User xYeezySZN, Defcad User xYeezySZN, and Twitter User xYeezySZN was obtained by Venable when the mail envelope icon (depicted as ) was clicked on the linktree landing page.

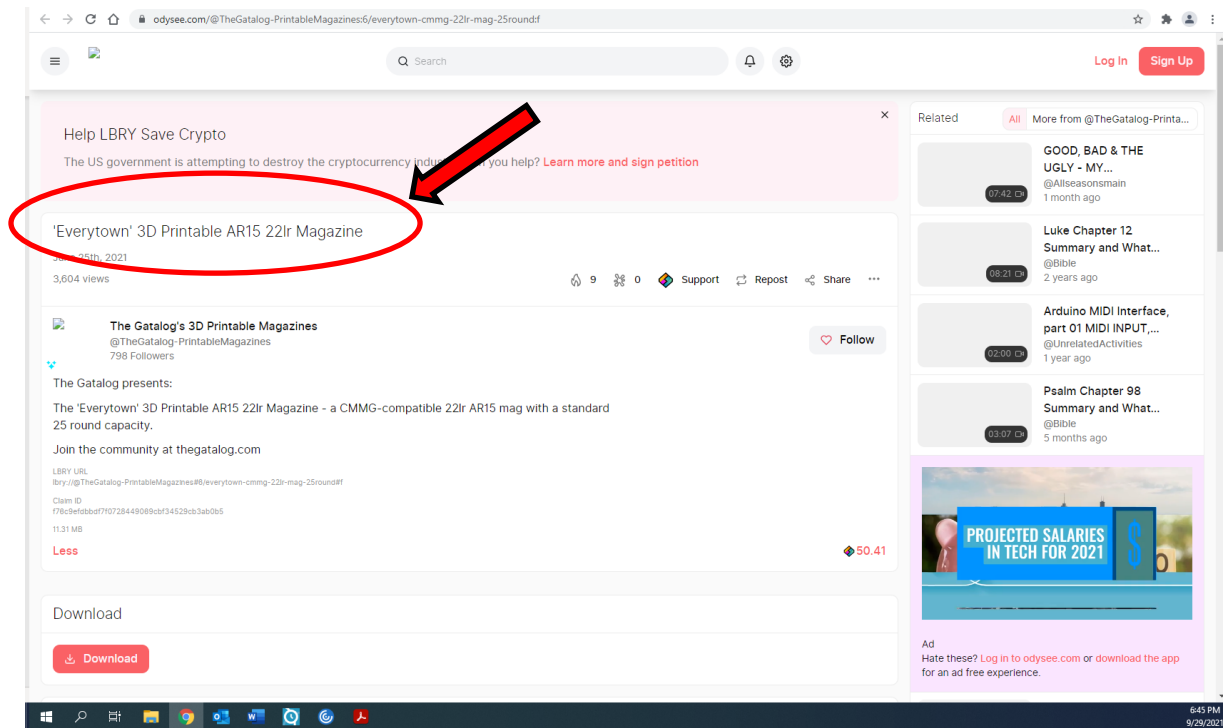
Defendant Odysee User TheGatalog-PrintableMagazines

35. Defendant Odysee User TheGatalog-PrintableMagazines uploaded the

downloadable file containing 3-D printing instructions for “‘Everytown’ 3D Printable AR15 22lr Magazine” to Odysee on June 25, 2021. This magazine is advertised as providing a 25-round capacity.

36. The listing uses Everytown’s identical EVERYTOWN® trademark in the product title.

37. Screenshots of the “‘Everytown’ 3D Printable AR15 22lr Magazine” listing are provided in Complaint **Exhibit 5** and below.



38. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts bearing the identical Everytown Marks.

39. As of the filing of Everytown’s Complaint, Defendant Odysee User TheGatalog-PrintableMagazines’s “‘Everytown’ 3D Printable AR15 22lr Magazine” listing has already been viewed over 3,500 times.

Defendant The Gatalog

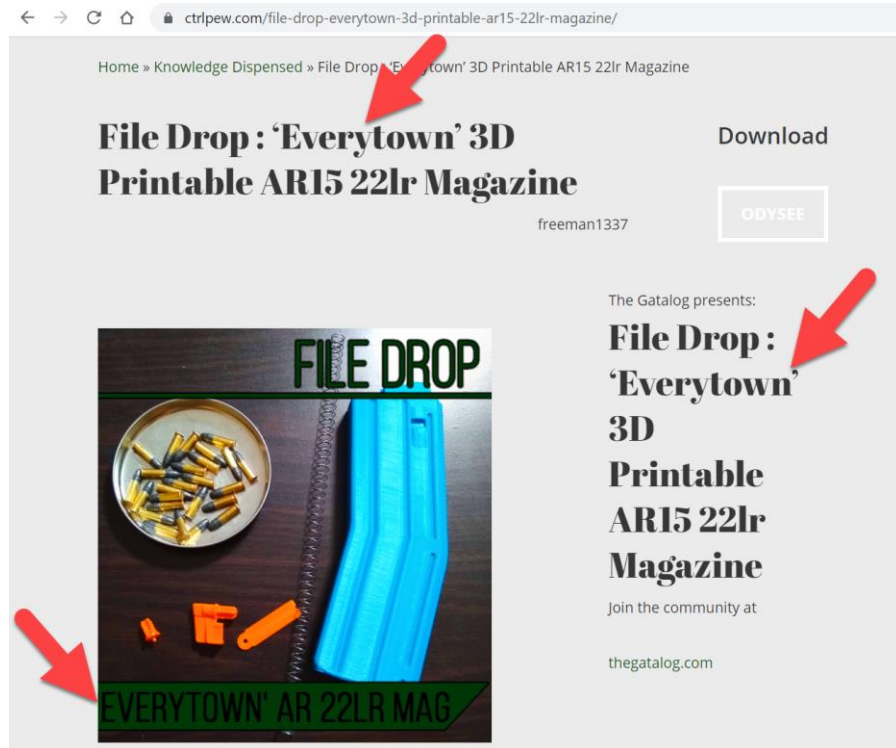
40. Defendant The Gatalog promotes the downloadable file “‘Everytown’ 3D Printable AR15 22lr Magazine” on its Instagram page as available for download on ctrlpew.com which links to Defendant Odysee User TheGatalog-PrintableMagazines’s Odysee listing for “‘Everytown 3D Printable AR15 22lr Magazine.’”

41. The listing uses Everytown’s identical EVERYTOWN® trademark in the product title.

42. A screenshot of Defendant The Gatalog’s Instagram post promoting the listing for “‘Everytown’ 3D Printable AR15 22lr Magazine” on website www.ctrlpew.com is depicted in Complaint **Exhibit 5** and below.



43. A screenshot of Defendant The Gatalog’s post on promoting the listing for “‘Everytown’ 3D Printable AR15 22lr Magazine” on www.ctrlpew.com is depicted in Complaint **Exhibit 5** and below.



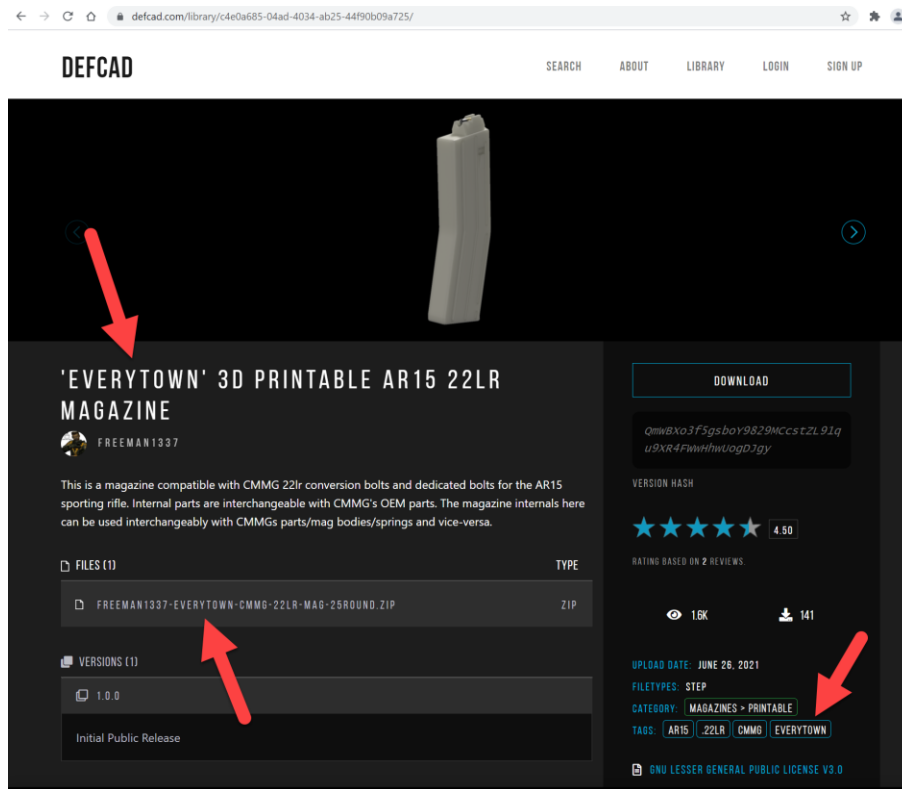
44. Defendant The Gatalog's post on www.ctrlpew.com promoting the listing for “‘Everytown’ 3D Printable AR15 22lr Magazine” links to Defendant Odysee User TheGatalog-PrintableMagazines 3-D printing instructions for “‘Everytown’ 3D Printable AR15 22lr Magazine” on Odysee discussed above.

Defendant Defcad User Freeman1337

45. Defendant Defcad User Freeman1337 uploaded the downloadable file containing 3-D printing instructions for “‘Everytown’ 3D Printable AR15 22LR Magazine” to Defcad.com on June 26, 2021.

46. The listing uses Everytown’s identical EVERYTOWN® trademark in the product title.

47. Screenshots of the “‘Everytown’ 3D Printable AR15 22LR Magazine” listing are provided in Complaint **Exhibit 5** and below.



48. Once downloaded, consumers use the downloadable files containing the instructions for 3-D printing the Infringing Products to make gun parts and accessories bearing the identical Everytown Marks.

49. Defendant Defcad User Freeman1337's post also includes the Everytown Marks in its searchable tags.

50. As of the filing of Everytown's Complaint, Defendant Defcad User Freeman1337's "Everytown' 3D Printable AR15 22LR Magazine" listing has already been viewed over 2,100 times and downloaded over 180 times.

51. Additional examples of actual 3-D printed guns, gun parts, and accessories bearing the identical Everytown Marks as a result of Defendants' Infringing Products are depicted below.





Defendant Defcad, Inc.

52. On or about August 24, 2021, Everytown submitted a notice to Defendant Defcad complaining of trademark infringement by Defendants' Infringing Products.

53. Defendant Defcad neither responded to Everytown's complaint nor removed the listings for the Infringing Products.

54. Defendant Defcad User xYeezySZN added the text "DMCA? Never heard of her." to the description of its listings for the Infringing Products. Screenshots of Defendant User xYeezySZN's updated listings are contained in Complaint **Exhibit 5**.

Defendants' Conduct Appears to Be Done Intentionally and in Bad Faith

55. Defendants' conduct began long after Everytown's adoption and use of the Everytown Marks, and well after Everytown obtained the U.S. registrations in the Everytown Marks.

56. On or about August 24, 2021, Everytown submitted a notice to Odysee.com complaining of trademark infringement by Defendants' Infringing Products. In response, Odysee.com removed the complained-of listings of Defendants' Infringing Products.

57. Defendants received the notice of Everytown's rights to the Everytown Marks as demonstrated in Defendants' tweet below.



58. On or about September 15, 2021, Odysee.com reinstated the complained-of listings of Defendants' Infringing Products based on Odysee's policy that listings are reinstated once a counter-notice is submitted and will not be removed again without a court order.

59. The Odysee.com counternotice system appears to be handled by the entity LBRY, Inc. as all correspondence related to Everytown's infringement notice was sent from the e-mail address hello@lbry.com.

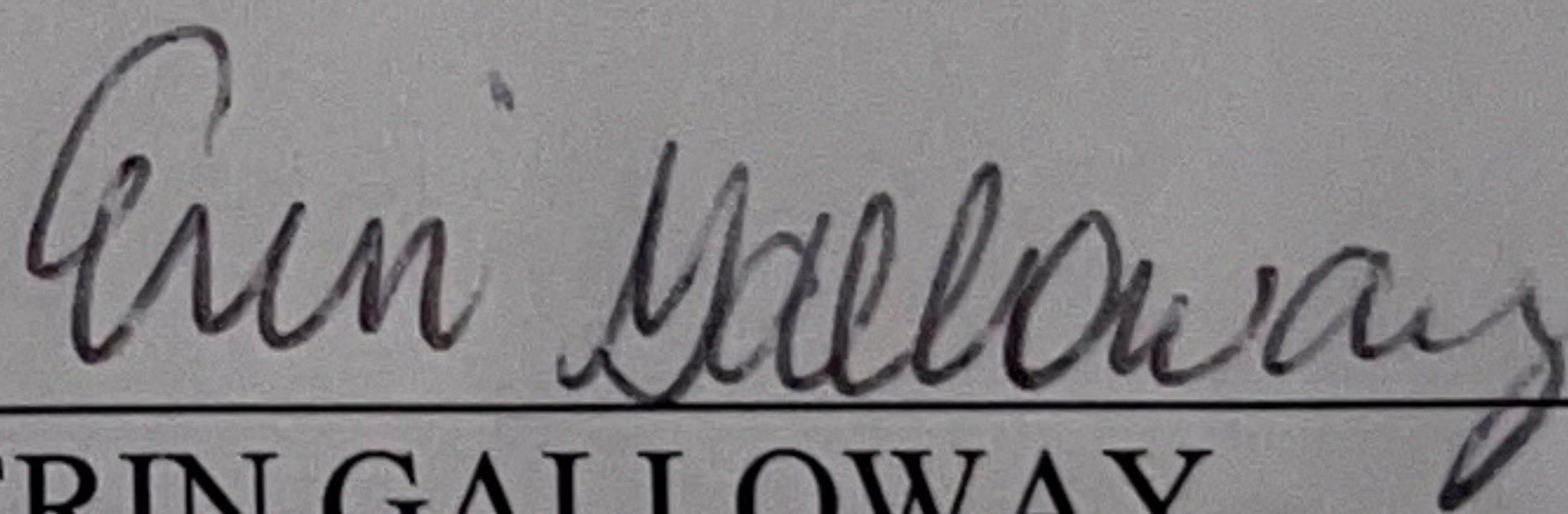
60. The Defendants have tweeted photographs of the 3-D printed gun parts at Everytown, referenced the Everytown Marks within the titles and description of the Infringing Products, and failed to remove the Infringing Products after Everytown submitted complaints to Odysee and Defcad.

61. There does not appear to be any way to contact the Defendants on Odysee.com other than to "comment" on a user's post.

62. There does not appear to be any way to contact Defendants on Defcad.com as Defcad.com does not have any comment or messaging features on its website.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 21, 2021


ERIN GALLOWAY